Delegated Powers and Law Reform Committee

Legislative Consent Memorandum on the Policing and Crime Bill
Contents

Introduction 1
Delegated Powers 2
Recommendation 4
Annexe 5
Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1;

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

i. any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

parliament.scot/delegated-powers-committee
DPLR.Committee@scottish.parliament.uk
0131 348 5175

Follow the Scottish Parliament @ScotParl
Committee Membership

**Convener**

*John Scott*
Scottish Conservative and Unionist Party

**Deputy Convener**

*Stuart McMillan*
Scottish National Party

**Rachael Hamilton**
Scottish Conservative and Unionist Party

**Monica Lennon**
Scottish Labour

**David Torrance**
Scottish National Party
Introduction

1. At its meeting on 15 November 2016, the Committee considered the provisions in the Policing and Crime Bill ("the Bill")\(^1\) that confer powers to make subordinate legislation on the Scottish Ministers.

2. The Bill was introduced in the House of Commons on 10 February 2016. It is a UK Government Bill and was introduced by the then Home Secretary Theresa May. The Bill was brought to the House of Lords on 14 September 2016, and is currently at Committee stage, with amendments having been considered on 2 and 9 November 2016. The Bill covers a range of matters wider than those before the Committee for delegated powers consideration. An outline of the Bill and specifically those provisions which extend to Scotland is therefore provided in the Annexes.

3. The Scottish Government lodged a Legislative Consent Memorandum ("LCM")\(^2\) on 23 June 2016 and a Supplementary Legislative Consent Memorandum\(^3\) on 6 October 2016.

4. The lead Committee in respect of this LCM is the Justice Committee. The draft motion, which will be lodged by the Cabinet Secretary for Justice, Michael Matheson MSP is:

   “That the Parliament agrees that provisions of the Policing and Crime Bill, introduced in the House of Commons on 10 February 2016, which refer to cross-border powers of arrest, restoring littering powers of Scottish local authorities and to firearms, where these matters fall within the legislative competence of the Scottish Parliament or alter the legislative competence of the Parliament or the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

5. The LCM was considered by the Committee under Rule 9B.3 of the Parliament’s Standing Orders. Paragraph 6 of Rule 9B.3 provides that where the Bill that is the subject of a legislative consent memorandum contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions.
Delegated Powers

6. There is one clause in the Bill which confers delegated powers upon the Scottish Ministers, discussed below. There is no delegated powers memorandum available for the Committee’s consideration, although this is normal with UK Bills.

Clause 146: Powers of litter authorities in Scotland (inserting section 94(1) in the Environmental Protection Act 1990)

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>negative</td>
</tr>
</tbody>
</table>

Provisions

7. Prior to the coming into force of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”), local authorities in Scotland had a power to serve litter abatement notices under section 92 of the Environmental Protection Act 1990 (“the EPA”) and street litter control notices under section 93 of that Act (supplemented by section 94). The 2014 Act was intended to repeal sections 92-94 in England and Wales, where the provisions were being replaced by Community Protection Notices under the 2014 Act. However, an unintended effect of the 2014 Act was that the repeal of sections 92, 93, and 94 of the EPA extended to Scotland, as well as to England and Wales. The Community Protection Notice is not available in Scotland and the repeal has accordingly left a potential gap in the powers available in Scotland to tackle littering.

8. Clause 146(1) of the Bill reinstates the power of local authorities in Scotland to issue litter abatement notices and street litter control notices by re-enacting, with minor changes, sections 92, 93 and 94 of the EPA.

9. New section 92 (as with its predecessor) enables a Scottish local authority, where it is satisfied that relevant public land or land within a litter control area has been defaced by litter or that this is likely to recur, to issue a litter abatement notice to the relevant person or body. The notice will specify the time within which the litter must be cleared and/or prohibit further littering, with criminal sanctions for non-compliance.

10. New section 93 (similar to its predecessor) enables a Scottish local authority to issue a street litter control notice to the occupier or owner of commercial or retail premises of a kind specified in secondary legislation. Street Litter Control Notices give the local authority the power to require that various types of businesses, such as takeaway fast food enterprises, clean up the area in front of, or close to, their premises. The notice allows the council to enforce the instalment and maintenance of litter bins, and anything else that may be necessary to remove or reduce the amount of litter in a particular area, again with criminal sanctions for non-compliance.
Delegated power

11. New section 94(1) confers on the Scottish Ministers the power, by order (subject to the negative procedure), to prescribe the different types of commercial or retail premises in relation to which a street litter control notice may be issued under section 93, the descriptions of the land which may be included in a specified area adjoining the premises and the maximum area of land which may be included. The power also allows the Scottish Ministers to describe the premises or land by reference to occupation or ownership or to the activities carried out there.

Comment

12. The Committee considers that it is appropriate for the Scottish Ministers to have a power, by order, to prescribe the types of premises in respect of which local authorities may issue a street litter control notice, and the additional area adjoining the premises which may be covered by such a notice. The Scottish Ministers previously held this power prior to its inadvertent repeal by the 2014 Act.

13. The Committee is also content with the choice of the negative procedure. This is the procedure to which the power in section 94 was subject, prior to its repeal. The power enables the Scottish Ministers to specify certain matters of detail relating to the exercise of local authorities’ powers to control street litter, and as such the negative procedure appears to afford an appropriate level of scrutiny.
Recommendation

14. The Committee finds the power in section 94(1) of the Environmental Protection Act 1990 Act (as inserted by clause 146 of the Bill) to be acceptable in principle, and is content that the power is subject to the negative procedure.

---

1 The latest version of the Bill is available at: [http://services.parliament.uk/bills/2016-17/policingandcrime.html](http://services.parliament.uk/bills/2016-17/policingandcrime.html)


Outline of the Policing and Crime Bill

1. The purpose of the Policing and Crime Bill as stated by the UK Government is to:
   - Further improve the efficiency and effectiveness of police forces, including through closer collaboration with other emergency services;
   - Enhance the democratic accountability of police forces and fire and rescue services;
   - Build public confidence in policing;
   - Strengthen the protections for persons under investigation by, or who come into contact with, the police;
   - Ensure that the police and other law enforcement agencies have the powers they need to prevent, detect and investigate crime; and
   - Further safeguard children and young people from sexual exploitation.

2. The Bill is in 9 Parts and contains provision relating to emergency services collaboration (in England), reform of the police complaints and disciplinary systems, reform of police powers including in relation to terrorism and cross-border arrests, amendment of the Firearms Acts and amendments to the enforcement scheme for financial sanctions. A fuller overview can be found on pages 7 to 8 of the Explanatory Notes to the Bill.

Application and extent

3. The provisions of the Bill apply largely to England and Wales only, however there are exceptions.

4. Some of its provisions extend to Scotland, but relate to matters that are reserved to the UK Parliament under Schedule 5 to the Scotland Act 1998. These include provision on retention of fingerprints and DNA profiles under the Terrorism Act 2000, and other reforms to police powers which apply throughout the United Kingdom.

5. The provisions within the Bill which apply to Scotland and which require the legislative consent of the Scottish Parliament in terms of its Standing Orders relate to:
   - Cross-border maritime hot pursuit of vessels, bringing the arrangements into line with similar situations on land;
   - Cross-border arrest provisions, allowing people suspected of specified serious offences in Scotland to be arrested in other parts of the UK by police from those jurisdictions, and vice versa;
   - Enabling the Scottish Ministers to charge a fee for their licensing functions (under the Firearms Act 1968 and Firearms (Amendment) Act 1988) in respect of companies trading in prohibited weapons, museums with firearms collections and shooting clubs;
   - The reinstatement of anti-littering powers of Scottish local authorities under sections 92, 93 and 94 of the Environmental Protection Act 1990.
